

Order

**Michigan Supreme Court
Lansing, Michigan**

July 5, 2006

Clifford W. Taylor,
Chief Justice

ADM File No. 2003-21

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

Proposed Amendment
of Rule 9.207 of the
Michigan Court Rules

On order of the Court, this is to advise that the Court is considering alternative amendments of Rule 9.207 of the Michigan Court Rules. Before determining whether either of the alternative proposals should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at www.courts.michigan.gov/supremecourt.

Publication of these proposed alternatives does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions are indicated by underlining and
deletions are indicated by strikeover.]

ALTERNATIVE A

Rule 9.207 Investigation; Notice

- (A) [Unchanged.]
- (B) Investigation. Upon receiving a request for investigation that is not clearly unfounded or frivolous, the commission shall direct that an investigation be conducted to determine whether a complaint should be filed and a hearing held. If there is insufficient cause to warrant filing a complaint, the commission may:
 - (1) dismiss the matter,
 - (2) dismiss the matter with a letter of explanation or caution that addresses the respondent's conduct,
 - (3) dismiss the matter contingent upon the satisfaction of conditions imposed by the commission, which may include a period of monitoring,
 - (4) admonish the respondent, or

- (5) recommend to the Supreme Court private censure, with a statement of reasons.

~~If a request for investigation is filed less than 90 days before an election in which the respondent is a candidate, and the request is not dismissed forthwith as clearly unfounded or frivolous, the commission shall postpone its investigation until after the election unless two-thirds of the commission members determine that the public interest and the interests of justice require otherwise.~~

- (C) Adjourned Investigation. If a request for investigation is filed less than 90 days before an election in which the respondent is a candidate, and the request is not dismissed forthwith as clearly unfounded or frivolous, the commission shall postpone its investigation until after the election unless two-thirds of the commission members determine that the public interest and the interests of justice require otherwise.

~~(C)~~(D) Notice to Judge.

(1)-(4) [Unchanged.]

- (5) If the commission admonishes a judge pursuant to MCR 9.207(B)(4),

- (a) The judge may file 24 copies of a petition for review in the Supreme Court, serve two copies on the commission, and file a proof of service with the commission within 28 days of the date of the admonishment. The petition for review, and any subsequent filings, shall be placed in a confidential file and shall not be made public unless ordered by the Court.
- (b) The executive director may file a response with a proof of service on the judge within 14 days of receiving service of the petition for review.
- (c) The Supreme Court shall review the admonishment in accordance with MCR 9.225. Any opinion or order entered pursuant to a petition for review under this subrule shall be published and shall have precedential value pursuant to MCR 7.317.

~~(D)~~(E) [Relettered but otherwise unchanged.]

~~(E)~~(F) [Relettered but otherwise unchanged.]

ALTERNATIVE B

Rule 9.207 Investigation; Notice

- (A) [Unchanged.]
- (B) Investigation. Upon receiving a request for investigation that is not clearly unfounded or frivolous, the commission shall direct that an investigation be conducted to determine whether a complaint should be filed and a hearing held. If there is insufficient cause to warrant filing a complaint, the commission may dismiss the matter:
- (1) ~~dismiss the matter,~~
 - (2) ~~dismiss the matter with a letter of explanation or caution that addresses the respondent's conduct,~~
 - (3) ~~dismiss the matter contingent upon the satisfaction of conditions imposed by the commission, which may include a period of monitoring,~~
 - (4) ~~admonish the respondent, or~~
 - (5) ~~recommend to the Supreme Court private censure, with a statement of reasons.~~

If a request for investigation is filed less than 90 days before an election in which the respondent is a candidate, and the request is not dismissed forthwith as clearly unfounded or frivolous, the commission shall postpone its investigation until after the election unless two-thirds of the commission members determine that the public interest and the interests of justice require otherwise.

- (C)-(E)[Unchanged.]

Staff comment: Alternative A would allow a judge admonished by the Judicial Tenure Commission to request review of the admonishment by the Supreme Court.

Alternative B would eliminate the ability of the Judicial Tenure Commission to dismiss a matter with a letter of explanation, caution, or admonishment, or recommend private censure.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by November 1, 2006, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No.2003-21. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.htm.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 5, 2006

Corbin R. Davis

Clerk